

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

USCA Docket Number:

USDC Docket Number : 04-cv-11789

Marlene Johansen

v.

United States of America

CLERK'S CERTIFICATE

I, Sarah A. Thornton, Clerk of the United States District Court for the District of Massachusetts, do hereby certify that the annexed documents as indicated on the certified copy of the docket and contained in Volume(s) I are the original pleadings and constitute the record on appeal in the above entitled case for the Notice of Appeal filed on 8/8/05.


In testimony whereof, I hereunto set my hand and affix the seal of this Court on August 11, 2005.

Sarah A Thornton, Clerk of Court

By: 

Jeanette Ramos, Deputy Clerk

Receipt of the documents in the above entitled case is hereby acknowledged this date: 8/11/05


Deputy Clerk, US Court of Appeals

Please complete the following information:

COURT OF APPEALS DOCKET NUMBER ASSIGNED: _____

APPEAL

**United States District Court
District of Massachusetts (Boston)
CIVIL DOCKET FOR CASE #: 1:04-cv-11789-RCL**

Johansen v. United States of America
Assigned to: Judge Reginald C. Lindsay
Cause: 28:1340 Recovery of Erroneous
Refund

Date Filed: 08/17/2004
Jury Demand: Plaintiff
Nature of Suit: 870 Taxes
Jurisdiction: U.S. Government
Defendant

Intervenor Plaintiff

Ralph Johansen

represented by **David Sean McMahon**
Law Office of Meilman & Costa,
PC
70 Wells Avenue
Suite 200
Newton, MA 02459
617-969-9500
Fax: 617-969-0030
Email:
lawskmeilman.smcMahon@att.net

*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Plaintiff

Marlene Johansen

represented by **Timothy J. Burke**
Burke & Associates
400 Washington Street
Suite 303
Braintree, MA 02184
781-380-0770
Fax: 781-848-0330
Email: tim@burkelaw.us
LEAD ATTORNEY

ATTORNEY TO BE NOTICED

V.

Defendant

**United States of
America**

represented by **Stephen J. Turanchik**
U.S. Department of Justice
Post Office Box 55
Ben Franklin Station
Washington, DC 20044
202-307-6565
Fax: 202-514-5238
Email:
Stephen.J.Turanchik@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Counter Claimant

**United States of
America**

represented by **Stephen J. Turanchik**
U.S. Department of Justice
Trial Attorney, Tax Division
Post Office Box 55
Ben Franklin Station
Washington, DC 20044
202-307-6565
Fax: 202-514-5238
Email:
Stephen.J.Turanchik@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Counter Defendant

Timothy Burke

represented by **James H Everett**
Burke & Associates
400 Washington St.

Braintree, MA 02184
781-848-0770
Fax: 781-548-0330
Email: jeverett@burkelaw.us
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Melissa L. Halbig
Burke & Associates
400 Washington St.
Braintree, MA 02184
781-380-0770
Fax: 781-848-0330
Email: mhalbig@burkelaw.us
ATTORNEY TO BE NOTICED

Counter Defendant

National City Mortgage Co. represented by **David M. Rosen**
Harmon Law Offices, P.C.
150 California Street
Newton, MA 02458
617-558-8411
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Michelle C. Davenport
Harmon Law Offices
150 California Street
PO Box 610389
Newton, MA 02461
617-558-8469
Fax: 617-244-7304
Email:
mdavenport@harmonlaw.com
TERMINATED: 01/13/2005
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Richard A. Oetheimer

Goodwin Procter, LLP

Exchange Place

53 State Street

Boston, MA 02109-2881

617-570-1259

Fax: 617-523-1231

Email:

roetheimer@goodwinprocter.com

*LEAD ATTORNEY**ATTORNEY TO BE NOTICED***Counter Defendant****Marlene Johansen**

Date Filed	#	Docket Text
08/17/2004	<u>1</u>	COMPLAINT Filing fee: \$ 150, receipt number 58011, filed by Marlene Johansen.(Stanhope, Don) (Entered: 08/18/2004)
08/17/2004	•	Summons Issued as to United States of America. (Stanhope, Don) (Entered: 08/18/2004)
08/17/2004	•	If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge Collings. (Stanhope, Don) (Entered: 08/18/2004)
08/17/2004	<u>2</u>	NOTICE of Appearance by Timothy J. Burke on behalf of Marlene Johansen (Stanhope, Don) (Entered: 08/18/2004)
09/01/2004	<u>3</u>	SUMMONS Returned Executed by Marlene Johansen. United States of America -Civil Process Clerk for the United States Attorney for the District of Massachusetts served on 8/18/2004, answer due 10/18/2004. (Stanhope, Don) (Entered: 09/02/2004)

09/01/2004	<u>4</u>	SUMMONS Returned Executed by Marlene Johansen. United States of America-Mark W. Everson, Commissioner Internal Revenue Service served on 8/24/2004, answer due 10/25/2004. (Stanhope, Don) (Entered: 09/02/2004)
09/01/2004	<u>5</u>	SUMMONS Returned Executed by Marlene Johansen. United States of America-John D. Ashcroft, Attorney General of the United States served on 8/23/2004, answer due 10/22/2004. (Stanhope, Don) (Entered: 09/02/2004)
09/01/2004	<u>6</u>	SUMMONS Returned Executed by Marlene Johansen. United States of America-Steve Daige, Director of Internal Revenue Service served on 8/20/2004, answer due 10/19/2004. (Stanhope, Don) (Entered: 09/02/2004)
10/18/2004	<u>7</u>	ANSWER to Complaint, COUNTERCLAIM against Timothy Burke, National City Mortgage Co., Marlene Johansen by United States of America.(Stanhope, Don) (Entered: 10/19/2004)
10/25/2004	<u>8</u>	NOTICE of Scheduling Conference Scheduling Conference set for 12/1/2004 03:00 PM in Courtroom 11 before Judge Reginald C. Lindsay. (Hourihan, Lisa) (Entered: 10/25/2004)
11/08/2004	<u>9</u>	MOTION to Dismiss and Strike Counterclaims by Marlene Johansen.(Stanhope, Don) (Entered: 11/09/2004)
11/08/2004	<u>10</u>	MEMORANDUM in Support of <u>9</u> MOTION to Dismiss and Strike Counterclaims filed by Marlene Johansen. (Attachments: # <u>1</u> Exhibit State Court Records)(Stanhope, Don) (Entered: 11/09/2004)
11/19/2004	<u>12</u>	CERTIFICATION pursuant to Local Rule 16.1 by United States of America.(Stanhope, Don) (Entered: 11/22/2004)

11/22/2004	<u>11</u>	Assented to MOTION to Continue Scheduling Conference by Marlene Johansen.(Burke, Timothy) (Entered: 11/22/2004)
11/22/2004	<u>13</u>	RESPONSE to Motion re <u>9</u> MOTION to Dismiss <i>Counterclaims</i> filed by United States of America. (Turanchik, Stephen) (Entered: 11/22/2004)
11/30/2004	<u>14</u>	JOINT STATEMENT re scheduling conference. (Turanchik, Stephen) (Entered: 11/30/2004)
11/30/2004		Judge Reginald C. Lindsay : Electronic ORDER entered granting <u>11</u> Motion to Continue Scheduling Conference (Hourihan, Lisa) (Entered: 11/30/2004)
11/30/2004		Set Deadlines/Hearings: Scheduling Conference reset for 1/5/2005 02:30 PM in Courtroom 11 before Judge Reginald C. Lindsay. (Hourihan, Lisa) (Entered: 11/30/2004)
12/01/2004	<u>15</u>	MOTION to Intervene as a Plaintiff by Ralph Johansen. (Attachments: # <u>1</u> Exhibit 1# <u>2</u> Exhibit 2# <u>3</u> Exhibit 3)(Stanhope, Don) (Entered: 12/03/2004)
12/06/2004		Judge Reginald C. Lindsay : Electronic ORDER entered denying <u>15</u> Motion to Intervene as Plaintiff By Ralph Johansen; without prejudice because the moving party has failed to comply with Local Rule 7.1. (Stanhope, Don) (Entered: 12/06/2004)
12/13/2004	<u>16</u>	CERTIFICATION pursuant to Local Rule 16.1 by Marlene Johansen.(Stanhope, Don) (Entered: 12/14/2004)
12/15/2004	<u>17</u>	MOTION to Intervene as a Plaintiff by Ralph Johansen. (Attachments: # <u>1</u> Exhibit 1-3 NOT SCANNED# <u>2</u> Proposed Complaint in Intervention) (Stanhope, Don) (Entered: 12/17/2004)
12/15/2004	<u>18</u>	MEMORANDUM in Support of <u>17</u> MOTION to Intervene as Plaintiff by Ralph Johansen. (Stanhope, Don) (Entered: 12/17/2004)

12/17/2004	<u>19</u>	Opposition re <u>17</u> MOTION to Intervene filed by United States of America. (Turanchik, Stephen) (Entered: 12/17/2004)
12/22/2004	<u>20</u>	Judge Reginald C. Lindsay : ORDER entered REFERRING MOTION <u>17</u> MOTION to Intervene filed by Ralph Johansen, <u>9</u> MOTION to Dismiss filed by Marlene Johansen to Magistrate Judge Robert B. Collings(Stanhope, Don) (Entered: 12/22/2004)
12/23/2004	<u>21</u>	Judge Robert B. Collings : PROCEDURAL ORDER entered.(Dolan, Kathleen) (Entered: 12/23/2004)
12/30/2004	<u>22</u>	NOTICE of Appearance by David M. Rosen, Michelle C. Davenport on behalf of National City Mortgage Co. (Stanhope, Don) (Entered: 01/04/2005)
12/30/2004	<u>23</u>	ANSWER to Counterclaim by National City Mortgage Co..(Stanhope, Don) (Entered: 01/04/2005)
01/05/2005	•	ElectronicClerk's Notes for proceedings held before Judge Reginald C. Lindsay : Scheduling Conference held on 1/5/2005. Discovery due by 5/30/2005. Motions due by 7/30/2005. Court confers with counsel if they consent to proceed for all purposes before Magistrate Judge Collings. Counsel to speak with their respective clients and report back to the court.(Court Reporter None Present.) (Hourihan, Lisa) (Entered: 01/06/2005)
01/07/2005	<u>25</u>	REPLY Memorandum in Support of <u>17</u> Ralph Johansen's Motion to Intervene as a Plaintiff. filed by Ralph Johansen. (Attachments: # <u>1</u> Exhibit 1-2 (NOT SCANNED))(Stanhope, Don) (Entered: 01/11/2005)
01/10/2005	<u>24</u>	First MOTION for Leave to File <i>Reply Brief</i> by Marlene Johansen.(Burke, Timothy) (Entered: 01/10/2005)
01/13/2005	<u>26</u>	NOTICE of Appearance by Richard A. Oetheimer on behalf of National City Mortgage Co. (Stanhope, Don)

		(Entered: 01/14/2005)
01/13/2005	<u>27</u>	NOTICE of Withdrawal of Appearance Attorney Michelle C. Davenport terminated. (Stanhope, Don) (Entered: 01/14/2005)
01/26/2005	<u>28</u>	MOTION to Dismiss by Timothy Burke. (Attachments: # (1))(Everett, James) (Entered: 01/26/2005)
01/26/2005	<u>29</u>	MEMORANDUM in Support of <u>28</u> MOTION to Dismiss filed by Timothy Burke. (Stanhope, Don) (Entered: 02/01/2005)
01/26/2005	<u>30</u>	NOTICE of Appearance by James H Everett on behalf of Timothy Burke (Stanhope, Don) (Entered: 02/01/2005)
02/02/2005	<u>31</u>	Opposition re <u>28</u> MOTION to Dismiss <i>Timothy Burke's Motion to Dismiss</i> filed by United States of America. (Turanchik, Stephen) (Entered: 02/02/2005)
02/04/2005	<u>32</u>	Judge Robert B. Collings: Electronic ORDER entered granting <u>24</u> Motion for Leave to File a Reply Memorandum, no opposition having been filed. (Entered: 02/04/2005)
02/07/2005	<u>33</u>	Judge Robert B. Collings : ORDER entered regarding consent to reassignment of case. (Dolan, Kathleen) (Entered: 02/07/2005)
02/07/2005	<u>34</u>	Judge Reginald C. Lindsay : ORDER entered. REFERRING MOTION <u>28</u> MOTION to Dismiss filed by Timothy Burke, to Magistrate Judge Robert B. Collings(Stanhope, Don) (Entered: 02/07/2005)
02/10/2005	<u>35</u>	MOTION to Withdraw as Attorney by Timothy Burke.(Everett, James) (Entered: 02/10/2005)
02/10/2005	<u>36</u>	Letter from Stephen J. Turanchik, consenting to the reassignment of the above mentioned case to U.S. Magistrate Judge Collings. (Stanhope, Don) (Entered: 02/10/2005)

		02/14/2005)
02/15/2005	●	Judge Robert B. Collings: Electronic ORDER entered denying without prejudice <u>34</u> Motion to Withdraw as Attorney. Attorney Everett may file a motion to withdraw as soon as successor counsel enters his or her appearance for Attorney Burke or Attorney Burke files notice that he intends to represent himself pro se. (Entered: 02/15/2005)
02/15/2005	● <u>36</u>	Letter from D. Sean McMahon, in response to the Order issued by Magistrate Robert B. Colling on 2/7/04. (Stanhope, Don) (Entered: 02/16/2005)
02/17/2005	● <u>37</u>	Letter from Richard A. Oetheimer regarding Judge Collings Order dated 1/7/05. (Stanhope, Don) (Entered: 02/23/2005)
02/22/2005	● <u>38</u>	Letter from Timothy Burke, regarding Judge Collings 2/7/05 Order. (Stanhope, Don) (Entered: 02/24/2005)
05/04/2005	● <u>39</u>	STIPULATED AGREEMENT and [Proposed] Order by National City Mortgage Co.. (Abaid, Kim) (Entered: 05/05/2005)
05/13/2005	● <u>40</u>	NOTICE of Appearance by Melissa L. Halbig on behalf of Timothy Burke (Halbig, Melissa) (Entered: 05/13/2005)
05/20/2005	● <u>41</u>	Judge Reginald C. Lindsay : ORDER entered. STIPULATION AGREEMENT AND ORDER (Stanhope, Don) (Entered: 05/23/2005)
06/02/2005	● <u>42</u>	Judge Robert B. Collings : REPORT AND RECOMMENDATIONS re <u>17</u> MOTION to Intervene filed by Ralph Johansen; Recommendation: RECOMMEND Motion to Intervene by Ralph Johansen be DENIED; Objections to R&R due by 6/16/2005.(Dolan, Kathleen) (Entered: 06/02/2005)
06/13/2005	● <u>43</u>	OBJECTION to <u>42</u> Report and Recommendations filed by Ralph Johansen. (Flaherty, Elaine) (Entered: 06/13/2005)

		06/14/2005)
06/21/2005	44	REPLY TO OBJECTION to <u>42</u> Report and Recommendations filed by United States of America. (Turanchik, Stephen) (Entered: 06/21/2005)
07/13/2005	45	AFFIDAVIT OF SERVICE Executed by United States of America. Timothy Burke served on 1/5/2005, answer due 1/25/2005. Acknowledgement filed by United States of America. (Turanchik, Stephen) (Entered: 07/13/2005)
07/14/2005	46	Judge Robert B. Collings : REPORT AND RECOMMENDATIONS re <u>28</u> MOTION to Dismiss filed by Timothy Burke, <u>9</u> MOTION to Dismiss filed by Marlene Johansen, Recommendation: Plaintiff's Motion to Dismiss and Strike Counterclaims (#9) be DENIED; and Counterclaim Defendant's Motion to Dismiss Counterclaim (#28) be DENIED. Objections to R&R due by 7/28/2005.(Dolan, Kathleen) (Entered: 07/14/2005)
07/14/2005		Case no longer referred to Magistrate Judge Robert B. Collings. (Dolan, Kathleen) (Entered: 07/21/2005)
07/22/2005		Judge Reginald C. Lindsay : Electronic ORDER entered. ORDER ADOPTING REPORT AND RECOMMENDATIONS regarding <u>17</u> Motion to Intervene filed by Ralph Johansen, Action on motion: The motion is denied. (Lindsay, Reginald) (Entered: 07/22/2005)
07/29/2005	47	MOTION for Summary Judgment by United States of America.(Turanchik, Stephen) (Entered: 07/29/2005)
07/29/2005	48	MEMORANDUM in Support re <u>47</u> MOTION for Summary Judgment filed by United States of America. (Attachments: # <u>1</u> Exhibit 1# <u>2</u> Exhibit 2# <u>3</u> Exhibit 3# <u>4</u> Exhibit 4# <u>5</u> Exhibit 5# <u>6</u> Exhibit 6# <u>7</u> Exhibit 7# <u>8</u> Exhibit 8# <u>9</u> Exhibit 9# <u>10</u> Exhibit 10# <u>11</u> Exhibit 11# <u>12</u> Exhibit 12# <u>13</u> Exhibit 13# <u>14</u> Exhibit 14# <u>15</u>

		Errata 15# <u>16</u> Exhibit 16# <u>17</u> Exhibit 17# <u>18</u> Exhibit 18)(Turanchik, Stephen) (Entered: 07/29/2005)
07/29/2005	<u>49</u>	CERTIFICATE OF CONSULTATION re <u>47</u> MOTION for Summary Judgment by Stephen J. Turanchik on behalf of United States of America. (Turanchik, Stephen) (Entered: 07/29/2005)
08/01/2005	<u>50</u>	ANSWER to Counterclaim by Timothy Burke.(Burke, Timothy) (Entered: 08/01/2005)
08/01/2005	<u>51</u>	MOTION for Summary Judgment by Timothy Burke. (Attachments: # <u>1</u> # <u>2</u> # <u>3</u>)(Burke, Timothy) (Entered: 08/01/2005)
08/01/2005	<u>52</u>	Plaintff's Opposition to United States MOTION for Summary Judgment and Cross Motion for Summary Judgment by Marlene Johansen. (Attachments: # <u>1</u> # <u>2</u> # <u>3</u> # <u>4</u> # <u>5</u> # <u>6</u>)(Burke, Timothy) Modified on 8/2/2005 (to correct text to include oppsition and cross motion for summary judgment)(York, Steve). (Entered: 08/01/2005)
08/02/2005		• Notice of correction to docket made by Court staff. Correction: Docket text corrected: Text was corrected to include Oppsition to United States Summary Judgment and Cross Motion for Summary Judgment (York, Steve) (Entered: 08/02/2005)
08/02/2005		• Judge Reginald C. Lindsay : Electronic ORDER ADOPTING REPORT AND RECOMMENDATIONS regarding <u>28</u> Motion to Dismiss filed by Timothy Burke and <u>9</u> Motion to Dismiss filed by Marlene Johansen. Action on motions: Both motions are DENIED as recommended.(Lindsay, Reginald) (Entered: 08/02/2005)
08/08/2005	<u>53</u>	NOTICE OF APPEAL by Ralph Johansen. NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at

		http://www.ca1.uscourts.gov/clerks/transcript.htm MUST be completed and submitted to the Court of Appeals. Appeal Record due by 8/29/2005. (York, Steve) (Entered: 08/08/2005)
08/08/2005	<u>54</u>	MOTION for Stay Pending Appeal by Ralph Johansen.(York, Steve) (Entered: 08/08/2005)
08/08/2005	<u>55</u>	MEMORANDUM in Support re <u>54</u> MOTION for Stay Pending Appeal filed by Ralph Johansen. (York, Steve) (Entered: 08/08/2005)
08/09/2005	<u>56</u>	Opposition re <u>52</u> MOTION for Summary Judgment filed by United States of America. (Attachments: # <u>1</u> Exhibit 19# <u>2</u> Exhibit 20)(Turanchik, Stephen) (Entered: 08/09/2005)
08/10/2005	<u>57</u>	Ralph Johansen's Certification Pursuant To F.R.A.P. 10(b) (York, Steve) (Entered: 08/11/2005)